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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

SECURITIES AND EXCHANGE COMMISSION,)  
Plaintiff, )

v. )

C.A. No. 98-11904-NG

TERRY KOONTZ, et. al., )  
Defendants. )

GERTNER, D.J.:

FINAL JUDGMENT BY DEFAULT AGAINST DEFENDANT KURT FOX

June 28, 2002

Plaintiff Securities and Exchange Commission ("Commission"), having filed a Complaint and First Amended Complaint for Temporary Restraining Order, Preliminary and Permanent Injunction, Civil Monetary Penalties and Other Relief ("Complaint"); and Defendant Kurt Fox ("Fox") having failed to appear, plead or otherwise defend in this action, and her default having been entered, and it appearing that this Court has jurisdiction over the subject matter of this action and Relief Defendant Fox; and the Court, having considered the motion for default judgment, and the Court being fully advised in the premises:

Upon review of the evidence submitted by the SEC on the amount of disgorgement, this Court finds that Defendant Fox received ill-gotten gains totaling at least \$80,775.

Upon review of the evidence submitted by the SEC on the amount of prejudgment interest calculated on disgorgement, this Court finds that the use of interest rates established quarterly

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by the Internal Revenue Service for money owed to the United States Treasury is reasonable. Accordingly, this Court finds that: prejudgment interest on the disgorgement amount of \$80,775 entered herein against Defendant Fox totals \$27,667.81.

Upon review of the evidence submitted by the SEC, this court finds that Defendant Fox is not an infant or incompetent person in the military service of the United States.

**I.**

It is hereby **ORDERED, ADJUDGED AND DECREED** that Defendant Fox, his officers, agents, servants, employees, and attorneys and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise, and each of them, be and hereby permanently restrained and enjoined from violating Section 10(b) of the Securities and Exchange Act ("Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5] by, directly or indirectly, using any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange:

- a. To employ any scheme, device or artifice to defraud;
- b. To make any untrue statement of material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the

circumstances under which they were made, not misleading; or

- c. To engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person,

in connection with the purchase or sale of any security.

## II.

It is further **ORDERED, ADJUDGED AND DECREED** that Defendant Fox, his officers, agents, servants, employees, and attorneys and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise, and each of them, be and hereby permanently restrained and enjoined from violating Section 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 78q(a)] by, directly or indirectly, using any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange:

- a. To employ any scheme, device or artifice to defraud;
- b. To obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or

- c. To engage in any transaction, act, practice or course of business which operates or would operate as a fraud upon the purchaser.

**III.**

It is further **ORDERED, ADJUDGED AND DECREED** that Defendant Fox, his officers, agents, servants, employees, and attorneys and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise, and each of them, be and hereby permanently restrained and enjoined from violating Sections 5(a) and 5(c) of the Securities Act [15 U.S.C. §§ 77e(a) and 77(e)(c)], by, directly or indirectly, in the absence of any applicable exemption:

- a. Making use of any means of instruments of transportation or communication in interstate commerce or of the mails to sell securities through the use or medium of a prospectus or otherwise, unless a registration statement is in effect to such security;
- b. Carrying or causing to be carried through the mails or in interstate commerce, by any means or instruments of transportation, any security for the purpose of sale or for delivery after sale, unless a registration statement is in effect to such security; or

c. Making use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or offer to buy through the use or medium of a prospectus or otherwise any security, unless a registration statement has been filed to such security, or while a registration statement as to such security is the subject of a refusal order to stop order or (prior to the effective date of the registration statement) any public proceeding or examination under Section 8 of the Securities Act [15 U.S.C. § 77h].

**IV.**

It is further **ORDERED, ADJUDGED AND DECREED** that Defendant Fox, his officers, agents, servants, employees, and attorneys and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise, and each of them, be and hereby permanently restrained and enjoined from violating Section 15(a) of the Exchange Act [15 U.S.C. § 78o(a)], by, directly or indirectly, in the absence of any applicable exemption, making use of the mails or any means of interstate commerce to effect any transactions in, or induce or attempt to induce the purchase or sale of, any security for the account of others or of their own account unless

registered as a broker or dealer in accordance with Section 15(b) of the Exchange Act [15 U.S.C. § 78o(b)].

**V.**

It is **ORDERED, ADJUDGED AND DECREED** that Defendant Fox shall be liable for disgorgement in the amount of \$80,775, representing its gains from the conduct alleged in the Amended Complaint, plus prejudgment interest thereon in the amount of \$27,667.81, for a total disgorgement amount of \$108,442.81. The net proceeds obtained as a result of the sale of assets forfeited by Fox in civil forfeiture proceedings in the Middle District of Florida shall be set off against this total disgorgement amount. To satisfy this disgorgement obligation, Fox shall make payment into the Registry of this Court, by cashier's check, certified check, or postal money order, made payable to "Clerk, United States District Court", under cover of a letter that identifies the relief defendant, the name and number of this action and the name of this Court, with a copy to counsel for the SEC in its Boston District Office. This disgorgement payment shall be made within thirty days of entry of this Final Judgment. The disgorged funds and prejudgment interest shall be held by the Registry of this Court in an interest bearing account pending further order of the Court.

**VI.**

It is further **ORDERED** that any financial or brokerage institution or other person or entity holding any funds or securities in the name, for the benefit, or under the direct or indirect control of Defendant Fox shall deposit to the Registry of this Court such funds or the liquidated market value of such securities, immediately upon service of this Final Judgment upon them, by personal service or otherwise, including by facsimile transmission or overnight delivery.

**VII.**

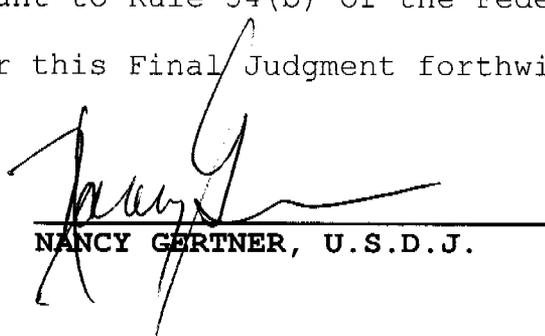
It is further **ORDERED, ADJUDGED AND DECREED** that this Court shall retain jurisdiction over Defendant Fox as a party to this matter for all purposes including implementation and enforcement of the terms and conditions of this Final Judgment and discovery.

**VIII.**

There being no just reason for delay, the Clerk of this Court is directed, pursuant to Rule 54(b) of the Federal Rule of Civil Procedure, to enter this Final Judgment forthwith.

**SO ORDERED:**

**Dated: June 28, 2002**



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NANCY GERTNER, U.S.D.J.